

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 FRIDAY, AUGUST 17, 2018

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW

16 - - -

17 Videotaped deposition of Dave
18 Gustin, held at the offices of Taft,
19 Stettinius & Hollister, LLP, 65 East State
20 Street, Suite 1000, Columbus, Ohio,
21 commencing at 9:01 a.m., on the above date,
22 before Carrie A. Campbell, Registered
23 Diplomate Reporter and Certified Realtime
24 Reporter.

25 - - -

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deps@golkow.com

1 Q. We showed you where you defined
2 it. Remember that document I showed you
3 earlier where you actually defined what a
4 suspicious order was? You want me to show it
5 to you again?

6 A. You might have to. I don't --

7 Q. Yeah.

8 A. I don't remember that I defined
9 it.

10 Q. Yeah, I'll -- time-wise, I
11 think the jury remembers that document.

12 It says, "McKesson's inability
13 to instill a culture of compliance, even
14 within its compliance operations, may explain
15 why McKesson WCH" -- which is Washington
16 Court House -- "did not report anything
17 suspicious about Community Drug of
18 Manchester, Kentucky, a pharmacy located in a
19 town of less than 1,000 adult residents."

20 Now, were you also in charge of
21 Manchester, Kentucky?

22 A. Yes.

23 Q. Okay. So now we got another
24 one. We got -- I'm losing track here, but
25 let me see if I can read. So the Department

1 of Justice has written this letter where
2 they're talking about the failures of
3 McKesson to properly control narcotic drugs
4 according to the law.

5 You understand that's what this
6 letter is about, right? Yes?

7 A. That's what it says.

8 Q. And so I happen to have you
9 sitting in front of the camera right now, and
10 as you're sitting in front of the camera, we
11 see that you're the person that was
12 responsible, at least according to this
13 report, for Livonia, right? Right?

14 A. For Livonia, yeah.

15 Q. For Preferred Care Pharmacy,
16 correct? Right?

17 A. Preferred Care, yes.

18 Q. And then for People's Pharmacy,
19 true?

20 A. Yes.

21 Q. And then for Washington Court
22 House, right?

23 A. Yes.

24 Q. And now Community Drug --
25 Community Drug in Manchester, Kentucky,

1 right?

2 A. Yes.

3 Q. And there it says, "A 50,000
4 dosage units of oxycodone products on a
5 monthly basis in 2011."

6 You were giving Community Drugs
7 in Manchester, Kentucky, 50,000 units of
8 oxycodone products on a monthly basis in 2011
9 according to this investigation, correct?

10 MS. BROWNING: Object to the
11 form.

12 THE WITNESS: I don't
13 remember -- I don't remember that
14 number at all.

15 QUESTIONS BY MR. PAPANTONIO:

16 Q. Well, what -- okay. Well, you
17 think the DEA's lying about that? This is
18 your opportunity now. If you believe the
19 government is lying about all this and
20 they're trying to say something wrong, you
21 need to tell the jury about it right now.

22 A. I'm just saying I have no
23 remembrance of that number, and I have no
24 idea where they came up with that number. I
25 do remember Community Drug of Manchester.

1 Q. You knew Manchester -- you knew
2 Manchester was under investigation, correct?

3 Oh, excuse me. Let me back up
4 just a second. You knew -- before I get to
5 Manchester, you knew -- you knew Community
6 Drug was under investigation, right, by the
7 Kentucky Board of Pharmacy? You knew that
8 while you were still selling drugs?

9 MS. BROWNING: I'm sorry, I am
10 confused by the question. You said
11 before you get to Manchester.

12 QUESTIONS BY MR. PAPANTONIO:

13 Q. Yeah, before I get to
14 Manchester, I want to now go back and spend a
15 minute on Community Drug.

16 MS. BROWNING: But isn't that
17 Manchester?

18 THE WITNESS: That is
19 Manchester.

20 QUESTIONS BY MR. PAPANTONIO:

21 Q. Okay, great. Community Drug is
22 Manchester, that is the same thing. But I
23 want to talk about Community Drug
24 specifically, that's what I am trying to say.

25 Okay. You knew, sir, that

1 Community Drug was under investigation by the
2 Kentucky Board of Pharmacy before -- and you
3 continued selling drugs while that was going
4 on, right?

5 A. I don't know that that's true.

6 Q. Well, all right. Let's show
7 him --

8 A. I do know that I reported them
9 to the DEA, and they ended up taking action
10 against them. And I know that I got a
11 telephone call from the DEA basically
12 congratulating me and asking me how I knew.

13 Q. Well, let's see how you knew.
14 I want to show you how you knew and what you
15 did while you knew that they were under
16 investigation and you continued to sell them
17 drugs. Let's --

18 MS. MOORE: Gustin 136.

19 (McKesson-Gustin Exhibit 136
20 marked for identification.)

21 QUESTIONS BY MR. PAPANTONIO:

22 Q. Would you look at page 76,
23 please? Let's go right to the issue.

24 See the date where it says --
25 halfway down on page 76, there's your name,

1 "Dave Gustin," right? Right?

2 A. From Dave -- oh, halfway down,
3 yes.

4 Q. And so it says, "Dave Gustin."
5 It says, "Please do not mention anything
6 about the Kentucky Board of Pharmacy comments
7 to us when talking to the Community account.
8 The advice we -- the advice we got were
9 confidential, not to be shared with anyone
10 outside the company. It is a contact that we
11 need to protect and will serve us well in the
12 future."

13 Then you give us a quote by
14 Abraham Lincoln, "You cannot help men
15 permanently by doing for them what they could
16 and should do for themselves."

17 So you see the date there,
18 May 1, 2012?

19 A. Yes.

20 Q. You knew that they were under
21 investigation on May 1, 2012, right? Right?

22 A. I see that it says Board of
23 Pharmacy's comments. I don't know what those
24 comments were looking at this document.

25 Q. You knew something was wrong,

1 and they were being looked at, didn't you,
2 sir?

3 MS. BROWNING: Objection.

4 THE WITNESS: I don't know from
5 four years ago or -- more than that,
6 six years ago, what I knew and didn't
7 know.

8 QUESTIONS BY MR. PAPANTONIO:

9 Q. Well, you certainly -- you
10 think -- to actually sell them narcotics
11 while they're under investigation would be a
12 serious, serious violation of what your job
13 responsibilities would be, wouldn't it?
14 Right?

15 A. It seems like this was in
16 conjunction with my lowering their
17 thresholds --

18 Q. You continued to sell them
19 drugs?

20 A. -- pending an investigation.

21 Q. Right.

22 You continued selling them
23 drugs knowing they were under investigation.

24 That's a yes or no, sir.

25 Did you or didn't you?

1 A. I can't tell looking at this
2 what we did or didn't do.

3 Q. Didn't you just say you lowered
4 their threshold but you continued selling
5 drugs? Isn't that what you just told me?

6 MS. BROWNING: Objection.
7 Misstates his testimony.

8 QUESTIONS BY MR. PAPANTONIO:

9 Q. Isn't that exactly what you
10 did; you sold them less, but you continued
11 selling them drugs even after the Board of
12 Pharmacy had them under investigation, yes?

13 A. The Board of Pharmacy -- in
14 another part of this letter it says that they
15 advised us to sell standard amounts.

16 Q. So you continued selling drugs
17 to them after they were under investigation,
18 yes or no?

19 A. Per the direction of the Board
20 of Pharmacy, we did whatever -- well, we took
21 whatever action we took. I can't tell
22 looking at this exactly what that was.

23 Q. And you didn't tell the DEA
24 about this, did you?

25 A. Yeah, after we got to the point

1 where we were cutting them off, and we
2 weren't doing business with them anymore, I
3 told the DEA, and I told them --

4 Q. You told them after you knew
5 they were under investigation, sir, didn't
6 you? That's when you told the DEA about it,
7 after you knew they were under investigation?

8 A. I told them after I continued
9 my investigation, and then we took the action
10 and closed them down, and that's when I told
11 the DEA.

12 Q. You had an investigation going,
13 is that what you're telling me? Is that your
14 testimony here, that Dave Gustin had an
15 investigation going of Community Drug? Is
16 that what you're telling me, yes?

17 A. Yes, I was looking into the
18 Manchester Community Drug, the pharmacy.

19 Q. And let's see -- so let's see
20 what this investigation that the Department
21 of Justice found.

22 It says, "Community Drug,
23 Manchester, Kentucky, a pharmacy located in a
24 town of less than 1,000 adult residents, was
25 ordering 20,000 to almost 50,000 dosage units

1 of oxycodone products on a monthly basis in
2 2011."

3 You were the one supplying them
4 those narcotics, correct?

5 A. I don't know that that's true.

6 Q. Well, what does it say?

7 A. Based on the time frames and
8 when we opened the account, and I --

9 Q. Well, let's read it.
10 "Manchester, Kentucky, a pharmacy located in
11 less than 1,000 adult residents ordering
12 20,000 to almost 15,000 units of oxycodone on
13 a monthly basis in 2011. Indeed, McKesson,
14 Washington Court House" --

15 Again, that's your facility
16 that you were the DRA, right?

17 A. Yes.

18 Q. -- "only took action to reduce
19 this pharmacy's threshold for OxyContin
20 products after receiving a tip from the state
21 pharmacy board that it was under
22 investigation."

23 And then it goes on to say that
24 "even after McKesson WCH was aware of this
25 pharmacy was under investigation, it

1 continued to supply it with controlled
2 substances while apologizing for having to
3 reduce the thresholds and promising to bump
4 up those thresholds as soon as they could
5 justify doing so."

6 You told this pharmacy that,
7 we're going to reduce you, but after the
8 investigation, we're going to bump you back
9 up, didn't you? You told them that, didn't
10 you?

11 MS. BROWNING: Objection.

12 THE WITNESS: If we could
13 justify doing so.

14 QUESTIONS BY MR. PAPANTONIO:

15 Q. Huh?

16 A. I didn't say we were going to.
17 I said if we could justify doing so, that
18 meant --

19 Q. You see the word "bump up"?
20 Put bump up -- underline "bump up."

21 You apologized to these people
22 that were being criminally investigated,
23 right?

24 MS. BROWNING: Objection.

25 THE WITNESS: I didn't know

1 that they were being criminally
2 investigated.

3 QUESTIONS BY MR. PAPANTONIO:

4 Q. Did you have any idea that the
5 Department of Justice was looking at them,
6 too?

7 A. I had no idea at that time that
8 anybody was looking at them other than me.

9 Q. But after you were put on
10 notice that they were being investigated --
11 after that, you continued to sell them drugs,
12 right?

13 MS. BROWNING: Objection.

14 Asked and answered.

15 QUESTIONS BY MR. PAPANTONIO:

16 Q. Right?

17 MS. BROWNING: Same objection.

18 QUESTIONS BY MR. PAPANTONIO:

19 Q. Well, here it is. "Even after
20 McKesson WCH" -- underline this, I just don't
21 want to misread this.

22 "Even after McKesson WCH was
23 aware that this pharmacy was under
24 investigation, it continued to supply it with
25 controlled substances while apologizing for

1 having to reduce the threshold and promising
2 to bump up those thresholds."

3 Do you see that?

4 A. I see that.

5 Q. Sir, you were selling 50,000
6 narcotic drugs to an area where there are
7 1,000 adults. That's what this says.

8 MS. BROWNING: Objection.

9 THE WITNESS: Again, I don't
10 remember that number of 50,000. I
11 don't know where that comes from.

12 QUESTIONS BY MR. PAPANTONIO:

13 Q. Well, let me do something. I
14 want to show you your letter, but hold that
15 right there. Right there.

16 Are you the guy that said we're
17 going to bump -- we're going to bump you up
18 as soon as you could justify doing so?

19 A. Meaning at the end of the
20 investigation.

21 Q. Right.

22 A. If the right circumstances
23 existed, that we would, and if not, we would
24 make a different decision.

25 Q. So you were going to bump

1 up the -- you were going to bump them up
2 where you have 1,000 adult residents
3 receiving 50,000 dosage on a monthly basis --
4 that's what it says. You understand -- you
5 are shipping 50,000 narcotic drugs into an
6 area where there are 1,000 people who live
7 there.

8 MS. BROWNING: Objection.

9 THE WITNESS: It seems like --
10 it seems like what you're missing is
11 that in that time frame, they got
12 taken all the way back down to
13 standard thresholds.

14 QUESTIONS BY MR. PAPANTONIO:

15 Q. I don't miss that at all, sir.
16 Don't -- let me ask the questions. I'm not
17 missing a thing. Trust me, I don't. I'm not
18 missing a thing.

19 You continued selling them
20 threshold limits even after you knew they
21 were under investigation, true?

22 A. I don't know that that's true.

23 Q. Well, we know this: I got --
24 I've got to go to this.

25 MR. PAPANTONIO: Go ahead and

1 give him this document. Do they
2 already have it? Do they have this
3 already? Do you already have -- yeah,
4 do you already have 1286? I think you
5 do.

6 MS. BROWNING: Oh, this one?

7 MR. PAPANTONIO: Yeah. Do you
8 want to pull that out?

9 MS. BROWNING: Gustin 136.

10 QUESTIONS BY MR. PAPANTONIO:

11 Q. Look at page 89, it's the last
12 page there.

13 MS. BROWNING: Last page.

14 THE WITNESS: Okay.

15 QUESTIONS BY MR. PAPANTONIO:

16 Q. It says, "Dave Gustin" at the
17 top, right?

18 See the date there, it's
19 August 23, 2012, right?

20 A. Okay.

21 Q. It says, "Kevin, I am ready to
22 recommend that we restore a portion of the
23 oxy and hydro that was their old threshold.
24 Maybe take oxy to 16,000 and hydro to -- and
25 keep oxy 30s at 5,000 so it can stay below

1 QUESTIONS BY MR. PAPANTONIO:

2 Q. It says -- again, it says --
3 okay. This is from Ryan England.

4 Who is that?

5 A. He was a sales rep.

6 Q. It says, "Terry."

7 Who is Terry?

8 A. Who is -- Terry and Melissa
9 Tenhet, I think they were the owners.

10 Q. Okay. They owned this
11 pharmacy, correct?

12 A. Yes.

13 Q. They owned this pharmacy that's
14 in a population of 1,000 people that had been
15 receiving 50,000 dosages a month of
16 narcotics; is that a correct statement? Yes?

17 A. Could you repeat it, please?

18 Q. Yes.

19 They were the owners of the
20 pharmacy in Community Drug -- called
21 Community Drug that was receiving 50,000
22 narcotic drugs a month --

23 A. Again --

24 Q. -- in a population of 1,000
25 people, right?

1 A. Again, I don't know about the
2 50,000 number, where that came from. I
3 don't -- I don't remember ever inputting a
4 number like that for this account.

5 Q. Do you have a reason to believe
6 the Department of Justice is making this up?
7 Now is your time to tell the jury. If the
8 Department of Justice is doing something, we
9 all want to know about it. All these folks
10 right here, we want to know.

11 A. Making it up?

12 Q. Yeah.

13 A. I doubt -- I doubt they make
14 things up, but they could be wrong.

15 Q. Yeah.

16 Okay. So let's see. Look at
17 page 81 here. We're on 81. This is Terry.
18 It says, "I certainly appreciate your point
19 of view and can't say I'd react any
20 differently if I were in your shoes. I
21 appreciate the apology and look forward to
22 moving on from this and continuing our
23 business relationship."

24 Right? And then it says,
25 "Unfortunately the DEA has put all

1 wholesalers in a difficult position of being
2 the police. What happened to Cardinal in
3 Florida a few months ago could have happened
4 to us, ABC, Smith or anyone else. Because of
5 that, we are all a little on edge and
6 paranoid about these license suspension,
7 fines and bad publicity. Anytime
8 out-of-state doctors are in the picture it
9 creates immediate and mass panic."

10 Now, you know, sir, that -- you
11 were aware that Cardinal was also hit for
12 {sic} the DEA for doing the same things of
13 not reporting suspicious orders and not
14 having the due diligence program to keep up
15 with suspicious orders; did you know that?

16 A. I knew that Cardinal was fined.

17 Q. And you know -- you know, sir,
18 don't you that you actually -- you actually
19 were -- a part of your job was to police the
20 distribution of these drugs from distributor
21 to pharmacy, part of your job to avoid
22 diversion was to be part of the policing of
23 that. You knew that, right? Did you not
24 know that?

25 MS. BROWNING: Object to the

1 form.

2 THE WITNESS: Part of our job

3 was to --

4 QUESTIONS BY MR. PAPANTONIO:

5 Q. Police and make sure that there
6 weren't too many drugs sold and used for
7 diversion?

8 A. To vet the accounts for -- yes.

9 Q. You would agree with that then.
10 It says, "I have an e-mail in
11 our regulatory team" -- let's see. "I have
12 an e-mail in to our regulatory team to find
13 out exactly what they need to bump up your
14 thresholds again."

15 Right? Isn't that what that
16 says?

17 A. Yes.

18 Q. "Bump up your thresholds."

19 And that's the same words that
20 were used in the -- in this -- in Department
21 of Justice report that -- where they say that
22 it continued to supply controlled
23 substances -- their, Community Drug -- and
24 that they would -- McKesson would bump up the
25 threshold as soon as they could.

1 MS. BROWNING: As soon as they
2 could justify doing so.

3 QUESTIONS BY MR. PAPANTONIO:

4 Q. Right?

5 A. I see that what it says here.

6 Q. Here's the word right here
7 again, "we're going to bump it up."

8 Do you think it's prudent to
9 bump up thresholds where you have search
10 warrants -- you have search warrants and
11 criminal convictions taking place for a --
12 one of your customers? You want to bump up
13 their orders?

14 A. I don't know that -- that
15 that's what happened here --

16 Q. Well, let's read on. Okay?

17 A. -- by the timing of it.

18 Q. Well, no, no, no. Let's go
19 ahead and read on.

20 "Even after McKesson was aware
21 that this pharmacy was under
22 investigation" --

23 MS. BROWNING: I'm sorry, are
24 we back to the letter?

25 MR. PAPANTONIO: Yeah, we're

1 back -- we're back to document 1443.

2 MS. BROWNING: Thank you.

3 MR. PAPANTONIO: Page 3.

4 QUESTIONS BY MR. PAPANTONIO:

5 Q. Same place we were. "Even
6 after McKesson WCH was aware that this
7 company was under investigation, it continued
8 to supply with controlled substance while
9 apologizing for having to reduce thresholds,
10 and promising to bump up those thresholds as
11 soon as they could justify doing so. In
12 September 2012, federal and state law
13 enforcement officers executed a search
14 warrant on Community Drug as part of an
15 investigation that ultimately resulted in the
16 criminal conviction of the lead pharmacist
17 and his wife."

18 Isn't that exactly who you were
19 writing to? That letter was to -- those were
20 the people who were involved in that letter?

21 A. I was not writing the letter.

22 Q. You did -- did you know these
23 people?

24 A. Know them?

25 Q. Yeah. Had you met them?

1 A. I don't know that I met them.
2 If I did, it might have been once, but I
3 don't remember them.

4 Q. "Days after the search warrant
5 was executed and covered by local television
6 news outlets, McKesson WCH contacted
7 Community Drug telling it that it would be
8 seeking a pretty sizeable increase in the
9 oxycodone and hydrocodone thresholds for this
10 store."

11 That's you saying that, isn't
12 it?

13 MS. BROWNING: Objection.

14 (McKesson-Gustin Exhibit 242
15 marked for identification.)

16 QUESTIONS BY MR. PAPANTONIO:

17 Q. After -- now, let me get this
18 right. Give me a piece of paper, please.
19 Could you please turn me over to this Elmo?
20 Let me get this right. I want to make sure
21 I'm not missing anything here.

22 So, first of all, we're talking
23 about WCH, right? WCH, that was your
24 responsibility as a DRA, true?

25 A. Washington Court House, yes.

1 Q. Washington Court House.

2 Number 2, Community Drugs --

3 yeah, Community Drug -- Community Drug had
4 been receiving -- well, Community Drug is in
5 a population of 1,000 people, according to
6 this report, right? Correct?

7 A. According to what it says, yes.

8 Q. Number 3, Community Drug was
9 your responsibility, right?

10 A. It fell under my purview, yes.

11 Q. Number 4, Community Drug,
12 according to this report, was receiving up to
13 50,000 narcotic drugs every month according
14 to this report, correct? Am I right?

15 A. According to the report.

16 Q. All right. Number 5, Community
17 Drugs had experienced an investigation by
18 the -- what was it -- we called it the
19 pharmacy board, right?

20 A. Board of Pharmacy.

21 Q. Board of Pharmacy.

22 They had -- obviously they were
23 investigated by the DEA, according to this,
24 right?

25 You understand this is the DEA

1 investigation? Let's not even put that on
2 there. Let's leave that off.

3 Let's just say that whatever
4 reason they had received -- they had been
5 subject to search warrants. They had been
6 subject to subpoenas, right? Right? Am I
7 right?

8 A. I don't know. I'm just
9 listening to you.

10 Q. This -- well, no, don't listen
11 to me. You tell me if I'm wrong, because I'm
12 not -- I want to know what you know.

13 Am I wrong that they were
14 issued subpoenas, or do you know?

15 A. I don't know that you're right
16 or wrong. In the first place, it's been
17 quite some time ago. In the second place,
18 this is not how I remembered this all taking
19 place.

20 Q. Okay. Well, you don't remember
21 that they were actually subject to an
22 investigation by the pharmacy board and that
23 they were issued search warrants. You didn't
24 know that, correct?

25 A. At the time?

1 Q. Yeah.

2 A. No. No. I see it now. I see
3 it after the fact.

4 Q. Well, you knew at the time,
5 though, that they were -- the pharmacy board
6 was investigating them?

7 A. I called them to find out if
8 they knew anything about them and to see if
9 they would tell me anything, because they
10 wouldn't always.

11 Q. All right. So now we know that
12 they were -- they were -- well, you don't --
13 there's nothing about subpoenas, I don't
14 think. So let's take subpoenas out. I just
15 want to see what you were operating when
16 y'all made your decision to sell them more
17 drugs.

18 So the pharmacy board is
19 investigating. They have search warrants.
20 They're -- let's see. What else? What else?

21 Oh, yeah. They were convicted
22 criminally, right? Please look. I want you
23 to --

24 MS. BROWNING: Which one are
25 you looking at?

1 MR. PAPANTONIO: I'm relying on
2 exactly what this report is saying
3 here.

4 MS. BROWNING: We've got so
5 many things we've been looking at. I
6 just want make sure I'm on the same
7 thing you are. Thank you.

8 MR. PAPANTONIO: I'm on 1443.3.
9 Okay? I want to make sure anything
10 that I put on this list, that the jury
11 can see, it's right in the report.

12 THE WITNESS: An investigation
13 that ultimately resulted in a criminal
14 conviction.

15 QUESTIONS BY MR. PAPANTONIO:

16 Q. Criminal conviction, right?

17 A. Of the lead pharmacist.

18 Q. And then after all of that
19 takes place, where they were selling 50,000
20 narcotic drugs every month to 1,000 people --
21 after that takes place, McKesson continues to
22 sell narcotics, right?

23 MS. BROWNING: Objection.

24 You're misstating what's in this
25 letter. It says "after the search

1 warrant was executed," not "after they
2 were convicted."

3 QUESTIONS BY MR. PAPANTONIO:

4 Q. Okay. After the search
5 warrant -- after the search warrant was
6 issued, you continued to sell -- we'll
7 take -- you know they were criminally
8 convicted?

9 A. Yes.

10 Q. Okay. But after the search
11 warrant, McKesson continues to sell narcotic
12 drugs, right?

13 A. Yes.

14 Q. And then it says right here --
15 it says that days after -- on your report
16 right there, take a look at 1443. "Days
17 after that search warrant was executed and
18 covered by local television and news
19 outlets" -- I want to make sure I get this
20 right. I want to see if you're the one that
21 said this.

22 "McKesson WCH contacted
23 Community Drug telling them it would be
24 seeking a pretty sizeable increase in
25 oxycodone and hydrocodone thresholds for the

1 store."

2 After all this, you want to
3 increase thresholds of narcotics, right?

4 MS. BROWNING: Object to the
5 form.

6 QUESTIONS BY MR. PAPANTONIO:

7 Q. That's what it says, doesn't
8 it? Tell me if I'm wrong.

9 A. I just need you to tell me what
10 you mean by "they."

11 Q. This is your facility. You're
12 the DRA. The buck stops you with you. You
13 know that, right?

14 A. Yes, but this is referring to a
15 specific -- it was telling it would seek a
16 pretty sizeable increase. You said "you." I
17 didn't --

18 Q. Did you do that?

19 A. I didn't communicate with them.
20 I made it a point not to communicate with
21 that pharmacy.

22 Q. Well, who did?

23 Somebody from McKesson did.

24 Who is that missing person? Can you guess?

25 A. It could have been Ryan

1 England. It could have been somebody at the
2 DC, but I don't know -- have any way of
3 really knowing who, but I wouldn't be seeking
4 a sizeable -- a sizeable -- I would be
5 entertaining it after being asked.

6 Q. Well, sir, you understand that
7 your company didn't even cut them off -- did
8 not cut off this company after all these
9 things we're talking about right here?

10 A. That's correct.

11 Q. They didn't cut them off until
12 October 2012. Did you know that?

13 A. I didn't remember the exact
14 time, but it seems like we did what we were
15 supposed to do.

16 Q. Did you know that you continued
17 to sell them narcotic drugs even -- after
18 this that we've been talking about, you
19 continued to sell them narcotic drugs all the
20 way up until October 23, 2012, yes or no?

21 A. That's very possible, and I
22 think it's because of in those phone calls
23 that I was talking about to the Board of
24 Pharmacy, phone calls to the DEA, it seems
25 like we were asked at one point in time not

1 to do anything to alert them that they were
2 being looked at, do standard thresholds, but
3 if we cut them off, then it would impact
4 their investigation.

5 So at the time I was engaged in
6 phone calls back and forth to either the DEA
7 or Board of Pharmacy or both, and that's why
8 when this was all said and done, they made a
9 phone call to me basically wondering how I
10 knew to tip them off that there was a problem
11 there.

12 Q. Well, you certainly didn't know
13 for years, did you --

14 MS. BROWNING: Are you finished
15 with your answer?

16 THE WITNESS: I am.

17 QUESTIONS BY MR. PAPANTONIO:

18 Q. You didn't know for years that
19 this criminal conduct, that they were
20 criminally convicted of, had been going on
21 under your watch as the DRA for WCH? The
22 whole time that was going on, you didn't know
23 a thing about it, did you?

24 MS. BROWNING: Objection.
25

1 QUESTIONS BY MR. PAPANTONIO:

2 Q. Right?

3 A. I don't remember everything at
4 that time, but I can't believe I would know
5 something was wrong and not do something
6 about it.

7 Q. Well, you certainly knew that
8 the total volume of controlled scripts
9 that -- in other words, you got 50,000 --
10 50,000 dosages going into 1,000 adult
11 residents. You knew that that was
12 inappropriately high, and you granted it
13 anyway, didn't you?

14 MS. BROWNING: Objection.

15 Asked and answered.

16 QUESTIONS BY MR. PAPANTONIO:

17 Q. Right? Yes?

18 A. I don't remember the specific
19 numbers and who granted what, and so I can't
20 just say a hard yes to that.

21 Q. Let's go to the next page.

22 Y'all need a break?

23 A. Which document?

24 MR. PAPANTONIO: Let's take a
25 ten-minute break.

1 asked me if I would go and visit a
2 pharmacy before they invested any time
3 or whatever to see if -- what my
4 feelings on that pharmacy were, and I
5 came back with a negative answer. And
6 in each of those instances, I let the
7 DEA know that we didn't bring them on
8 board so that they would have a
9 heads-up.

10 QUESTIONS BY MS. BROWNING:

11 Q. Now, you were asked some
12 questions earlier about Community Drug and
13 your interactions with them. I think they're
14 in Manchester, Kentucky; is that correct?

15 A. Yes.

16 Q. After you cut off -- you
17 terminated sales of controls to Community
18 Drug, correct?

19 A. Yes.

20 Q. And after you did that, did you
21 notify the DEA?

22 A. Yes.

23 Q. And what -- tell us about that.

24 A. My recollection of that, and
25 it's been a long time ago, was that I was

1 asking questions about them. After they
2 became on board, I asked more questions about
3 them. I began hearing things that were
4 unsettling. I followed up by phone calls to
5 the Board of Pharmacy. I'm not sure, but it
6 seemed like there was potential action, and
7 then as is the case sometimes, and this
8 happened outside of St. Louis, too, they
9 didn't want to have them just cut off, if
10 they were in the middle of an investigation,
11 and, therefore, be given a heads-up that
12 something might be up. So we reduced them to
13 standard thresholds, and I refused to talk
14 with the owner any, you know, after that, and
15 I don't know that I talked with him before
16 that.

17 And I remember we ended up --
18 the DEA ended up taking action on them.
19 Naturally, we -- not too much after that, I
20 got a phone call from the DEA, I think it was
21 Jeff Connors and a supervisor or something
22 like that. They congratulated me on it and
23 asked what might have tipped off that it
24 wasn't a good pharmacy.

25 Q. All right. And you had

1 similar -- a similar story with -- or actions
2 with regard to Gwinn's pharmacy in Indiana?

3 A. Yes.

4 Q. In Anderson, Indiana?

5 A. Yes.

6 Q. When you would contact the DEA
7 about customers, how would they respond?

8 A. Oftentimes they would play it
9 very close to the vest. They didn't want to
10 say too much over the phone or tell me too
11 much of anything. About the best I could
12 hope for was there was a DEA agent, I think
13 his name was Dave Tateple {phonetic}, and he
14 operated in the St. Louis market, and he
15 would give me cryptic -- kind of cryptic
16 replies saying, "Well, as a matter of fact,
17 we are aware of that customer," something to
18 that effect.

19 I think that kept him from
20 saying too much, and at the same time it
21 gave -- it gave me a heads-up that there may
22 be something to really look at on that
23 customer form. It's just not go near him.

24 MS. BROWNING: All right.

25 Thank you, Mr. Gustin. That's all I